

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PAUL LANCASTER,

Plaintiff,

v.

NEW JERSEY TRANSIT
CORPORATION, et al.,

Defendants.

No. 1:20-cv-01995-NLH-MJS

OPINION and ORDER

HILLMAN, District Judge

WHEREAS, in its September 30, 2021 Opinion, the Court granted then-Defendant New Jersey Transit Corporation's motion to dismiss Plaintiff Paul Lancaster's ("Plaintiff") Complaint with prejudice and Defendant Kevin O'Neill's motion to dismiss without prejudice, (ECF 42 at 13-15); and

WHEREAS, in the same Opinion and corresponding Order, Plaintiff was instructed to show cause within thirty days why his claims against remaining Individual Defendants should not be dismissed for failure to effectuate service, (id. at 16-17; ECF 43); and

WHEREAS, Plaintiff, on October 13, 2021, filed an Amended Complaint naming Defendant O'Neill, Jennifer Piccoli, Chuck Hellyer, Andre Coleman, and Alexis Allen as Defendants, (ECF 44 at ¶¶ 6-10), but not Defendants Carl Pulaski, Larry Marshinak, Mark Kocher, Joseph Butterfield, Adam K. Phelps, Janne M.

Victor, Yamika Dabady, Cynthia M. Banks, J. Schmatz, and Charles Nielsen from the Original Complaint, (id.; ECF 2 at ¶¶ 5-20); and

WHEREAS, because the Amended Complaint supersedes the Original Complaint, the Court interprets the absence of Original Defendants Pulaski, Marshinak, Kocher, Butterfield, Phelps, Victor, Dabady, Banks, Schmatz, and Nielsen's from the Amended Complaint as Plaintiff abandoning his claims against those Original Defendants, see Palakovic v. Wetzel, 854 F.3d 209, 234 n.26 (3d Cir. 2017) ("[A]ny second amended complaint may not plead claims against . . . the defendants named in the original complaint who were not named in the amended complaint . . . , as the [plaintiffs] have abandoned their claims against each of those individuals."); and

WHEREAS, Defendant O'Neill, who was served with the original Complaint, (ECF 31), and answered by moving to dismiss (ECF 36; see also Fed. R. Civ. P. 12(b)), has not yet responded to Plaintiff's Amended Complaint; and

WHEREAS Plaintiff has filed a motion for partial summary judgment against Defendant O'Neill, which is presently pending before the Court, (ECF 46); and

WHEREAS the Court prefers to consider motions for summary judgment on the merits, see Burton v. Pa. State Police, 990 F. Supp. 2d 478, 496 n.27 (M.D. Pa. Jan. 2, 2014) (disregarding the

plaintiff's untimely opposition to the defendants' motion for summary judgment because "the court preferred to dispose of Defendants' motion for summary judgment on the merits rather than on a procedural defect").

THEREFORE,

IT IS HEREBY on this 3rd day of November, 2022

ORDERED that Defendant O'Neill shall have fourteen (14) days to respond to Plaintiff's Amended Complaint. (ECF 44). Plaintiff's pending motion for partial summary judgment, (ECF 46), is denied without prejudice; and it is further

ORDERED that Defendants Pulaski, Marshinak, Kocher, Butterfield, Phelps, Victor, Dabady, Banks, Schmatz, and Nielsen, having been excluded from Plaintiff's Amended Complaint, (ECF 44), will be dismissed from this action without prejudice.

At Camden, New Jersey

/s Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.